



August 29, 2018

Hon. Stacy L. Ruble, Secretary  
Postal Regulatory Commission  
901 New York Avenue NW, Suite 200  
Washington, D.C. 20268-0001

Dear Mr. Ruble:

In connection with the Commission's rules pertaining to periodic reports, 39 C.F.R. § 3050, I am submitting today copies of the quarterly Billing Determinants for Quarter 3 of Fiscal Year (FY) 2018. This report consists of two main parts:

1. Market Dominant Products Billing Determinants – FY 2018 Quarter 3 (This part is **Public**, and includes a total of eight subparts organized by class<sup>1</sup>);
2. Competitive Products Billing Determinants – FY 2018 Quarter 3 (This part is **Non-Public**, and includes a total of nine subparts<sup>2</sup>).

I have uploaded electronic copies of each of these files to their respective Public and Non-Public folders on the United States Postal Service Secure Large File Transfer Web Application portal (USPS SLFT).

As noted above, part 1 of the Billing Determinants for Quarter 3 (Market Dominant Products Billing Determinants, separated into eight subparts) is public and may be posted on the Commission's website. Part 2 (Competitive Products Billing Determinants, separated into nine subparts) is confidential and non-public and should not be posted on the Commission's website. The Postal Service has determined that the entire contents of this competitive products submission should be withheld from public disclosure and that redaction of only parts would not be meaningful or practicable.

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<sup>1</sup> Specifically, Alaska Bypass, Bound Printed Matter, First-Class Mail Domestic, First-Class Mail International, Media and Library Mail, Market Dominant Special Services, Periodicals, and USPS Marketing Mail.

<sup>2</sup> Specifically, a cover page plus Competitive International, Competitive Special Services, First-Class Package Service, Parcel Return Service, Parcel Select, Priority Mail, Priority Mail Express, and Retail Ground.

Attachment 1 to this letter is the Postal Service's application for non-public treatment of the Competitive Products Billing Determinants.

If you have any questions regarding this submission or the discussion above, please do not hesitate to contact me.

Best regards,

/s/

Kara C. Marcello  
Attorney, Pricing and Product Support

cc: Ms. Taylor

## ATTACHMENT 1

### APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS

In accordance with 39 C.F.R. § Part 3007, the United States Postal Service (Postal Service) hereby applies for non-public treatment of certain materials filed under seal with the Commission. The materials consist of the billing determinant reports for the third quarter of Fiscal Year (FY) 2018, to the extent they concern competitive products, both domestic and international. Public versions of these reports, which show both domestic and international market dominant product information, are included with this filing as separate Excel files.

The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3007.201(b)(1)–(b)(8) below.

**(1) The rationale for claiming that the materials are non-public, including the specific statutory provision(s) supporting the claim, and an explanation justifying application of the provision(s) to the materials.**

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, are not required to be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(3)–(4). The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A).<sup>1</sup> Because the portions of the billing determinant reports filed non-publicly

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<sup>1</sup> The Commission has indicated that “likely commercial injury” should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 4679, Order Adopting Final Rules relating to Non-Public Information, Docket

fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

**(2) A statement of whether the submitter, any person other than the submitter, or both have a proprietary interest in the information contained within the non-public materials, and the identification(s) specified in paragraphs (b)(2)(i) through (iii) of this section (whichever is applicable). For purposes of this paragraph, identification means the name, phone number, and email address of an individual.<sup>2</sup>**

The Postal Service has a proprietary interest in the information contained within the non-public materials. Therefore, the Postal Service designates Nabeel R. Cheema, Chief Counsel, to accept actual notice of a motion related to the non-public material or notice of the pendency of a subpoena or order requiring production of the materials. Mr. Cheema's email address is [Nabeel.R.Cheema@usps.gov](mailto:Nabeel.R.Cheema@usps.gov), and his telephone number is 202-268-2989.

In addition, the Postal Service also believes that FedEx Express may have a proprietary interest in some of the data in the billing determinant reports. The Postal Service gives notice that it has informed FedEx Express, in compliance with 39 C.F.R. §

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No. RM2018-3, June 27, 2018, at 16 (reconfirming that the adopted final rules do not alter this long-standing practice); PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

<sup>2</sup> Section 3007.201(b)(2) further states the following:

(i) If the submitter has a proprietary interest in the information contained within the materials, identification of an individual designated by the submitter to accept actual notice of a motion related to the non-public materials or notice of the pendency of a subpoena or order requiring production of the materials.

(ii) If any person other than the submitter has proprietary interest in the information contained within the materials, identification of each person who is known to have a proprietary interest in the information. If such an identification is sensitive or impracticable, an explanation shall be provided along with the identification of an individual designated by the submitter to provide notice to each affected person.

(iii) If both the submitter and any person other than the submitter have a proprietary interest in the information contained within the non-public materials, identification in accordance with both paragraphs (b)(2)(i) and (ii) of this section shall be provided. The submitter may designate the same individual to fulfill the requirements of paragraphs (b)(2)(i) and (ii) of this section.

3007.200(b), of the nature and scope of these types of filings and its ability to address its confidentiality concerns directly with the Commission. The Postal Service identifies James H. Ferguson, Corporate Vice President, Customer and Business Transactions, FedEx Corporation & General Counsel, FedEx Corporate Services, Inc., as the appropriate contact on behalf of FedEx Express. Mr. Ferguson's telephone number is (901) 434-8600, and his email address is [jferguson1@fedex.com](mailto:jferguson1@fedex.com).

Furthermore, in the case of billing determinant reports, the Postal Service believes the only other third parties with a proprietary interest in the materials are the negotiated service agreement (NSA) customers whose mailing profile information is included in the reports. The Postal Service maintains that any customer identifying information should be withheld from public disclosure. Therefore, rather than identifying the customers of negotiated service agreements, the Postal Service gives notice that it has already informed each customer, in compliance with 39 C.F.R. § 3007.200(b), about the nature and scope of filings of quarterly Billing Determinants, and about the customer's ability to address its confidentiality concerns directly with the Commission. The Postal Service employee responsible for providing notice to the third parties with a proprietary interest in the materials filed in this docket is Elizabeth A. Reed, Attorney, whose email address is [Elizabeth.A.Reed@usps.gov](mailto:Elizabeth.A.Reed@usps.gov), and whose telephone number is 202-268-3179.

**(3) A description of the information contained within the materials claimed to be non-public in a manner that, without revealing the information at issue, would allow the Commission to thoroughly evaluate the basis for the claim that the information contained within the materials are non-public.**

In connection with this application, the Postal Service has filed the billing determinant reports for the third quarter of FY 2018. A version showing information for

competitive products was filed under seal, with a version showing information for market dominant products filed publicly. The Postal Service maintains that the non-public portions of these materials should remain confidential.

The NSA tab in several of the Excel files submitted under seal displays the names of postal patrons whose identifying information may be withheld from mandatory public disclosure by virtue of 39 U.S.C. § 504(g)(1) and 39 U.S.C. § 410(c)(2).<sup>3</sup> The remaining data on the same worksheets consist of revenue, volume, and weight information relevant to each customer's mailing profile, which is commercially sensitive.

All other data in the non-public Excel files consist of commercially sensitive information such as domestic and international competitive product volume and revenue according to pricing level and weight step, adjustment factor calculations (which are based on particular competitive product revenues), as well as international insurance volume and revenue according to insured value level.

**(4) Particular identification of the nature and extent of the harm alleged and the likelihood of each harm alleged to result from disclosure.**

If the information that the Postal Service determined to be protected from disclosure due to its commercially sensitive nature were to be disclosed publicly, the Postal Service considers it quite likely that it would suffer commercial harm. First, revealing any customer identifying information would enable competitors to focus marketing efforts on current postal customers which have been cultivated through the efforts and resources of the Postal Service. The Postal Service considers that it is

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<sup>3</sup> In some or all cases, the names of NSA customers may have been coded according to Commission docket numbers. Notwithstanding this possibility, the Postal Service submits that certain customers could be identified by industry experts based on the mailing profile information. Therefore, even if the customer-identified information is coded, the Postal Service believes that the information itself could disclose customer identities. Consequently, the Postal Service seeks protection from disclosure on that basis.

highly probable that if this information were made public, the Postal Service's competitors would take immediate advantage of it. Many NSAs include a provision allowing the mailer to terminate the contract without cause by providing at least 30 days' notice. Therefore, there is a substantial likelihood of losing the customers to a competitor that targets them with lower pricing.

Other information filed non-publicly consists of mailing profile information. This information, if disclosed, would offer competitors invaluable insight into the type of customers to whom the Postal Service is offering each type of competitive NSA. Even without identifying individual mailers, competitors would be able to direct their sales and marketing efforts at the customer segment that the Postal Service has had the most success at attracting. This would undermine both existing customer relationships and the potential for other new NSA customers.

A similar rationale applies to information showing domestic and international published price product revenue and volume according to weight, pricing, and insured value levels, as well as adjustment factor calculations based on product revenues. This information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices. Competitors could use the information to analyze the Postal Service's possible market strengths and weaknesses and to focus sales and marketing efforts on those areas, to the detriment of the Postal Service. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the material filed non-publicly.

In addition, disclosure of certain statistical information could limit the ability of FedEx Express, a counterparty to a strategic alliance with the Postal Service, to

negotiate effectively and could allow competitors to analyze the traffic in the strategic alliance. The more disaggregated nature of the product information in the international context make the international data particularly vulnerable to analysis and use by competitors.

**(5) At least one specific hypothetical, illustrative example of each alleged harm.**

Harm: Revealing any type of customer identifying information would enable competitors to target the customers for sales and marketing purposes.

Hypothetical: The identity of one or more customers listed in these reports is revealed to the public. Another expedited delivery service has an employee monitoring the filing of periodic reports and passing along the information to its sales function. The competitor's sales representatives can then quickly contact the Postal Service's customer and offer the customer lower rates or other incentives to terminate its contract with the Postal Service in favor of using the competitor's services.

Harm: Public disclosure of information in the report would be used by competitors of the NSA customers to their detriment.

Hypothetical: A competitor of a USPS NSA customer obtains a copy of the unredacted version of the billing determinants report from the Postal Regulatory Commission's website. It analyzes the work papers to assess the customer's underlying costs, and uses that information to identify lower cost alternatives to compete against the USPS customer.

Harm: Competitors could use customer mailing profile, product volume, weight, and revenue distribution, and product insured-value distribution information to assess vulnerabilities and focus sales and marketing efforts to the Postal Service's detriment.

Hypothetical: Customer mailing profile information in the billing determinant reports is released to the public. Another delivery service's employee monitors the filing of this



information and passes the information along to its sales and marketing functions. The competitor assesses the typical size, mailing volume, and content characteristics of Postal Service NSA customers. The competitor then targets its advertising and sales efforts at actual or potential customers with similar profiles, hindering the Postal Service's ability to reach out effectively to these customers.

This hypothetical also applies to more generic product-level data, from which one can calculate the volume and revenue performance of each identified competitive product and the distribution of the Postal Service's overall customer base in terms of item weight, revenue, or value (in the case of international insurance). For these reasons, release of any of the non-public information would pose actual commercial harm to the Postal Service, regardless of the information's present favorability.

**Harm:** Public disclosure of information contained in the non-public annex associated with international delivery services provided in arrangement with specific third parties would be used by those parties' competitors to their detriment.

**Hypothetical:** A competitor of FedEx Express, such as a competing international delivery service, obtains information contained in the billing determinant reports. The competitor uses the information to assess the market potential and, as a baseline, to negotiate with other parties to develop lower-cost alternatives and undermine FedEx Express' market offerings.

**(6) The extent of protection from public disclosure alleged to be necessary.**

The Postal Service maintains that the portions of the materials filed non-publicly and relating to competitive products should be withheld from persons involved in competitive decision-making in the relevant markets for competitive delivery products (including private sector integrators and foreign postal administrations), as well as their

consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for these or similar products should not be provided access to the non-public materials.

**(7) The length of time for which non-public treatment is alleged to be necessary with justification thereof.**

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless otherwise provided by the Commission. 39 C.F.R. § 3007.401(a). However, because the Postal Service's relationships with customers often continue beyond ten years, the Postal Service intends to oppose requests for disclosure of these materials pursuant to 39 C.F.R. § 3007.401(b-c).

**(8) Any other relevant factors or reasons to support the application.**

None.

***Conclusion***

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.